IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 2 of 1996 & Cross Objection No. 321 of 1997.

Date of decision: 5.12.2007.

Gian Chand & ors. ….. **Appellants.**

Vs.

Roshan Lal & anr. …. **Respondents.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellants : Mr. K.D.Sood, Advocate.

For the Respondents : Mr. N.K.Sood, Advocate.

Kuldip Singh, Judge (Oral).

The defendants are in appeal against the judgement, decree dated 13.11.1995, passed by the learned District Judge, Hamirpur, in Civil Appeal No. 37 of 1988. The plaintiffs have also filed cross objection No. 321 of 1997 in the appeal. This judgement shall dispose of RSA No. 2 of 1996 and Cross Objection No. 321 of 1997.

2. The facts in brief are that plaintiffs filed suit for possession of ½ share in the land comprised in khasra Nos. 49, 60, 116, 129, 157, 241, 252, 278, 298, 328, 362, 443, 450, 451/1, 496 and 498, kitas 16, measuring 20 kanals 14 marlas, as per jamabandi for the year 1980-81, Tikka Biar Khurad, Tappa Nanawan, Tehsil Barsar, District Hamirpur. The defendants No. 1 and 2 are the sons

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Whether the reporters of the local papers may be allowed to see the Judgment?

of defendant No. 3 and defendant No.3 is the brother of plaintiffs. The case of the plaintiffs is that the suit land is ancestral and parties are agriculturist and bound by the custom in the matter of alienation. No person can alienate the ancestral property without the consent of the reversioners and legal necessity. After the death of Shyama, defendants No.1 and 2 refused to deliver possession to plaintiffs claiming that deceased Shyama has made a will in their favour. Shyama deceased has not made any will in favour of defendants No.1 and 2.

3. The defendants contested the suit and alleged that suit property is not ancestral. It was self acquired property of Shyama. The parties are not governed by customs. Shyama deceased made a will in favour of defendants No.1 and 2 of the suit property on 4.9.1981. The objections of limitation, necessary parties, locus-standi and estoppel were also taken. The learned Senior Sub Judge dismissed the suit on 5.12.1987. The plaintiffs filed an appeal, which was allowed partly on 13.11.1995 and plaintiffs were held entitled to possession of ½ share in 18 Kanals 14 Marlas of the suit land, being ancestral in the hands of their deceased father Shyama and to that extent the judgement and decree of the trial court were set-aside. The remaining suit of the plaintiffs was dismissed, against the judgement, decree dated 13.11.1995, an appeal has been filed by the defendants and the plaintiff have filed the cross objection.

4. Braham Dass respondent died during the pendency of appeal and his son Roshan Lal and legal representative was brought on record. The appeal has been admitted on substantial questions of

law framed and placed on the file. I am not referring those substantial questions of law, in view of order which I intend to pass in the appeal and cross objection.

5. The learned counsel representing the parties have jointly submitted that the lower appellate court has not deeply gone into the entire matter. They have submitted that in view of the facts and circumstances of the case, they have no objection if the appeal and the cross objection are allowed and impugned judgement, decree are set-aside and the case is remanded to lower appellate court for deciding the appeal afresh with direction to render decision on all points raised by the parties. The learned counsel for the parties have submitted that this concession may not be construed that anyone of them is admitting any contention of the opposite side or admitting the correctness of decision of learned District Judge on any point.

6. In view of submissions made by the learned counsel for the parties, the appeal and cross objection are allowed. The judgement and decree dated 13.11.1995 passed by the learned District Judge are set aside. The case is remanded to learned District Judge, Hamirpur for fresh decision on all points/ issues raised by the parties. The parties through their counsel are directed to appear before the learned District Judge, Hamirpur on 26.12.2007. The Registry is directed to transmit the concerned record to the learned District Judge, Hamirpur, well before the date fixed. The learned District Judge shall decide the appeal on or before 30.6.2008

uninfluenced by any observation made in this judgement regarding the merits of the case. No costs.

December 5, 2007. **(Kuldip Singh),**
(*Hem*) **Judge.**